

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14031 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GOPALBHAI PUNAMBHAI SHARMA

Versus

DISTRICT MAGISTRATE, NADIAD

Appearance:

1. Special Civil Application No. 14031 of 2004
MS BANNA S DUTTA for Petitioner No. 1
MS HB PUNANI, LD. AGP for Respondent No. 1-2,4
RULE SERVED for Respondent No. 1
MR MI SHAIKH for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 23/12/2004

ORAL JUDGMENT

Heard Ms.Banna Dutta, learned counsel appearing

for the petitioner; Mr.M.I.Shaikh, ld.standing counsel appearing on behalf of respondent-Union of India, Ms.H.B.Punani, ld.AGP, appearing on behalf of the respondent-State. The reply affidavits filed by the respondent-State as well as respondent-Union of India tendered today by Ms.Punani and Mr.Malkan are taken on record and the same are considered by this Court.

2. The present petition is filed under Article 226 of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 24th August, 2004, passed by the District Magistrate, Kheda at Nadiad, under the purported exercise of powers vested with the Detaining Authority under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act'). It is submitted that the impugned order is violative of Articles 21, 22(1) and 22(5) of the Constitution of India. The petitioner is detained on account of serious allegations that are recorded as grounds for detention by the authority and served to the petitioner-detenu on 24th August, 2004, the day on which the order of preventive detention was executed. Today the petitioner-detenu is detained in District Jail, Surat. The petitioner on the date of order was holding a licence/parvana to run a Fair Price Shop and the main ground for passing the order of preventive detention is that he has indulged in selling and black-marketing the stock of food-grain and kerosene that was made available to the petitioner for Public Distribution System entrusted to him which was originally of one Shaileshkumar Hariprasad Barot. The Detaining Authority has considered the fact that the said Shailesh Barot was holding licence/parvana to run a Fair Price Shop but as he was not able to get his licence renewed well in time, which was expired on 31st December, 2002, the District Supply Officer and the competent authority decided to allot the distribution for the card holders who were receiving their food-grain and kerosene from the shop of Shailesh Barot, to the petitioner. Undisputedly, the petitioner was put under liability/obligation to take over the Fair Price Shop of Shailesh Barot from 5th May, 2004. When the checking squad inspected the Fair Price Shop, originally managed by Shailesh Barot, the officials found that the entire stock of food-grain, kerosene, etc. is sold off and practically nothing was distributed to the card-holders. The allegation in the grounds for detention is that the present petitioner and Shailesh Barot have jointly sold off the said material and thereby they have indulged in the black-marketing activity resulting into disorder in the Public Distribution System. The said Shailesh Barot is also detained by the

authority by another order dated 21st August, 2004. It is not the allegation that any irregularity or illegality was found qua the Fair Price Shop originally managed and handled by the present petitioner. The preparation of false bills in the names of card-holders who were getting their food-grain, kerosene, etc. from the shop of the said Shailesh Barot are the persons whose say was considered by the Checking Squad and the sponsoring authority. For short, the allegation is that the petitioner is indulging in the activity which was prejudicial to the maintenance of supplies of the essential commodities and therefore, he was required to be detained in view of the scheme of the Act.

3. The learned counsel appearing for the parties have taken me through the grounds conveyed to the petitioner-detenu and sensitivity involved in it; and I have also considered the stand taken by the respondents, who have resisted the present petition by filing reply affidavits.

4. The impugned order is assailed on various grounds. However, learned counsel appearing for the petitioner Ms.Dutta has concentrated her arguments mainly on three points. The first point pressed into service by Ms.Dutta is that the representation that was sent to the Detaining Authority on 28th August, 2004, has not been considered by the authority, though the authority was competent to take appropriate decision. According to her, unless the Detaining Authority becomes functus officio, it can consider the contentions raised by the petitioner-detenu under representation. The representation was dispatched on the fourth day of the detention and this representation was received by the office of the Detaining Authority on 1st September, 2004. It was forwarded to the competent authority on 3rd September, 2004. During the course of oral submissions, Ms.Dutta has produced a letter dated 3rd September, 2004, wherein it is mentioned that some telephonic inquiry was made as to the impugned order passed on 24th August, 2004 and the Detaining Authority was informed/intimated from the State Secretariat that the Government has approved/confirmed the impugned order on 1st September, 2004 and, therefore, the Detaining Authority forwarded the representation to the State Government for appropriate decision. By quoting relevant para:3 from the reply affidavit filed by the respondent no.2 that as per the say of the State Government, it is argued that the impugned order was approved by the State Government on 3rd September, 2004, within stipulated period of 12 days as per the provisions of the Act. Therefore, the

argument advanced before the Court by Ms.Dutta is that by making reference of some telephonic conversation in the letter dated 3rd September, 2004, the Detaining Authority has failed in discharging legal obligation to consider the representation that had reached well in time to its office and prior to the decision taken by the State Government on 3rd September, 2004. So non-consideration of representation by the Detaining Authority would go to the root of the validity of the impugned order.

5. The second point pressed into service by Ms.Dutta is that there is gross delay in passing the order of preventive detention. According to her, if the order of preventive detention was necessary, then immediately after 19th May, 2004, when the checking of the Fair Price Shop and its management was done by the officials of Civil Supply Department, the same would have been passed. It is alleged that though the management was entrusted to the present petitioner, actual distribution was handed over to Shailesh Barot whose licence was not renewed by the Civil Supply Authority. When such a serious irregularity was noticed, immediately after couple of days and on receipt of the report of the Checking Squad, the impugned order could have been passed. On the contrary, the petitioner was permitted to manage and distribute the essential commodities like food-grain, kerosene, etc. from his own Fair Price Shop i.e. shop under his original 'Parvana' granted to him till 31st July, 2004. The licence of the present petitioner has been suspended on 31st July, 2004. Even a criminal complaint has been lodged on 30th June, 2004, for the wrong committed by the present petitioner and another accused namely Shailesh Barot. There was no reason for the State machinery to continue the licence of Fair Price Shop of the present petitioner till 31st July, 2004. So it is argued that on 19th May, 2004, when the checking was carried out and at least 30th June, 2004, the day on which the criminal complaint was lodged, the order of preventive detention could have been passed but the said is passed after lapse of more than reasonable time and this delay has not been satisfactorily explained in the reply affidavits by the respondents. In support of this submission, Ms.Dutta has placed reliance on the decision of this Court (Coram : J.R. Vora, J) dated 26th August, 2003, in Special Civil Application No.10182 of 2003 in the case of Maksud Yasin Kayamkhyani v. State of Gujarat, which would help the petitioner. I would like to quote relevant observations of this Court (para:6), which are as under :

"6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystallly emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this Court in the matter of THAKORE GIRISHJI 2 GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002(1) GCD 338 and in the matter of ELES NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, the detention order therefore cannot be sustained and deserves to be quashed on this ground alone."

6. The third point pressed into service by Ms.Dutta is that when the licence of the petitioner as a Fair Price Shop Parvana holder was suspended on 31st July, 2004 and he was not holding another licence to deal with the said commodities in any manner; especially the blue kerosene, food-grain, etc., then there was no need to pass the order of preventive detention as the petitioner was supposed to face criminal prosecution on account of the complaint filed on 30th June, 2004. There was no

scope for the petitioner to indulge in such type of black marketing activities under the licence of Fair Price Shop.

7. So on the above grounds, the Court is accepting the ratio laid down by this Court as well as the Apex Court; and also the say of the petitioner that the authority has committed grave error in recording subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. Obviously, therefore, it was erroneous to exercise privilege vested with the authority under the Act. So without entering into the merits of other grounds, the order of detention is required to be quashed and set aside.

8. In view of the above, the petition is hereby allowed. The order of detention dated 24th August, 2004, passed by the respondent no.1 herein, is hereby ordered to be quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.

(C.K. Buch, J)

Aakar